

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

Keshuna Abcumby,

Plaintiff,

Case No. 24-11445

v.

Judith E. Levy

United States District Judge

Michigan Department of
Corrections, *et al.*,

Mag. Judge David R. Grand

Defendants.

_____/

**ORDER DIRECTING PLAINTIFF TO CORRECT DEFICIENCIES
OR VOLUNTARILY DISMISS THE SUIT**

Plaintiff filed the complaint in this matter on May 31, 2024. (ECF No. 1.) The Court issued summonses for all Defendants on June 21, 2024. (ECF No. 4.) Defendants Michigan Department of Corrections (“MDOC”), Heidi Washington, and Jeremy Howard made an appearance on September 23, 2024. (ECF No. 6.) On November 5, 2024, the Court issued an order to show cause why the case should not be dismissed for failure to prosecute, pursuant to Eastern District of Michigan Local Rule 41.2. (ECF No. 9.) In this order to show cause, the Court noted that:

It is not clear if Plaintiff served the Defendants. Additionally, to date, Defendants MDOC, Washington, and Howard have not filed an answer. Assuming that MDOC, Washington, and Howard were served on or before the date of their appearance, September 23, 2024, they have not filed an answer within 21 days of being served. Fed. R. Civ. Pro. 12(a)(1)(A)(i).

(*Id.* at PageID.42–43.)

Plaintiff timely filed a response to the order to show cause. (ECF No. 10.) In the response, Plaintiff demonstrates that Defendants MDOC, Washington, and Howard waived service of summons. (*Id.*; *see also* ECF No. 11.) In the waivers, these three Defendants agree that they “must file and serve an answer or a motion under Rule 12 within 60 days from July 24, 2024,” which is September 23, 2024. (ECF No. 11, PageID.57, 59, 61.) Plaintiff does not address Defendants Steven Adamson or Annette Tellas and whether they were served. (ECF No. 10.)

I. Defendants MDOC, Washington, and Howard

Plaintiff requests that the Court dismiss its order to show cause and allow the parties to proceed accordingly. This request is denied.

Plaintiff’s response to the order to show cause is deficient as to Defendants MDOC, Washington, and Howard. The Court noted in its

order to show cause that these three Defendants made an appearance, but had not filed an answer or a motion under Rule 12. (ECF No. 9, PageID.42–43.) Plaintiff's response demonstrates that these Defendants waived the service of a summons, but also shows that the Defendants have not complied with the waivers' requirements, which set a deadline of September 23, 2024 for an answer or a motion under Rule 12.¹ (ECF No. 11.) As such, Plaintiff's response to the order to show cause is deficient as to Defendants MDOC, Washington, and Howard.

Accordingly, Plaintiff must take immediate steps to move for default judgment on Defendants MDOC, Washington, and Howard, or voluntarily dismiss her claims against them. Plaintiff must do so by **December 6, 2024**. If Plaintiff fails to do so, the Court will dismiss her claims against these three Defendants for failure to prosecute pursuant to Local Rule 41.2.

¹ The waivers of the service of summons state that these Defendants have 60 days after July 24, 2024 to file an answer or a Rule 12 motion, but also indicate that they were signed and dated on August 26, 2024. (ECF No. 11, PageID.57, 59, 61.) Even if the 60-day deadline began on August 26, 2024, Defendants' answers or Rule 12 motions were due on October 25, 2024 and are still late.

II. Defendants Steven Adamson and Annette Tellas

Plaintiff's response to the order to show cause is also deficient as to Defendants Adamson and Tellas. (ECF No. 10.) Plaintiff does not provide any information on Adamson and Tellas, such as if they were served or if they also waived service. Further, Adamson and Tellas have not made an appearance in this case and have not filed an answer or Rule 12 motion.

Plaintiff did not comply with the Court's show cause order as to Defendants Adamson and Tellas. Plaintiff must take immediate steps to effectuate service on these two Defendants, or voluntarily dismiss her claims against them. Plaintiff must do so by **December 6, 2024**. If Plaintiff fails to do so, the Court will dismiss her claims against these two Defendants for failure to prosecute pursuant to Local Rule 41.2 and for failure to comply with Federal Rule of Civil Procedure 4(m).

IT IS SO ORDERED.

Dated: November 18, 2024
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on November 18, 2024.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager